U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FEB 23 2005

FILE: SRC 02 064 50844 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: On November 13, 2001 the Director, Texas Service Center, denied the initial petition (with receipt number SRC0119150332), which sought to extend the beneficiary's employment for a nonimmigrant visa. On December 19, 2001 the petitioner filed another petition (with receipt number SRC0206450844) to extend the beneficiary's employment for a nonimmigrant visa. On February 15, 2002 the director denied that petition. On July 9, 2003 the petitioner filed a motion to reopen the director's denial of the second petition to extend the beneficiary's employment. On July 10, 2003 the director dismissed the petitioner's motion and upheld the decision denying the petition. The matter is now before the Administrative Appeals Office (AAO) on certification. The decision of the director will be affirmed, and the second petition to extend the beneficiary's employment will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Texas. It claims to be a subsidiary of Allied Estate, located in Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition stating that the petitioner is not eligible for an extension as a result of Citizenship and Immigration Services' (CIS) denial of the initial petition to extend the beneficiary's employment.[1] The director specifically cited 8 C.F.R. § 214.1(c)(4), which precludes approval of an extension of stay in a case where the applicant failed to maintain status or where such status expired prior to filing of the petition.

On July 9, 2003 the petitioner obtained new counsel and filed a motion to reopen stating that the petitioner never received the decision, dated February 15, 2002, in which the second petition to extend the beneficiary's employment was denied. Counsel resubmits many of the previously submitted documents, as well as a statement suggesting that the beneficiary was entirely unaware of the November 13, 2001 denial of the initial petition to extend the beneficiary's period of employment. Counsel also fails to acknowledge that the petition that is at issue in the instant matter was the second petition of its kind, filed after the first extension petition was denied.[2]

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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[1] The record does not indicate that the petitioner filed either a motion or a Form I-290B appealing the director's November 13, 2001 denial of the initial petition to extend the beneficiary's employment.

[2] The AAO acknowledges that the primary address listed in the February 15, 2002 denial notice was that of the petitioner's counsel of record. Although the petitioner retained different counsel since the date the second extension petition was filed, there is no explanation as to why that denial was not received.

In the instant case, the petitioner filed not one, but, two petitions to extend the beneficiary's employment. The record contains a letter, dated December 17, 2001, from the petitioner's first counsel acknowledging denial of the initial petition to extend the beneficiary's employment. Counsel stated that since the time the petition was denied, the petitioner had "reorganized and believes it will now qualify for an extension." The AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant case, counsel apparently sought to circumvent this established precedent by filing a new petition after the initial extension petition was denied and the beneficiary's lawful period of stay had expired. Pursuant to the regulation at 8 C.F.R. § 214.1(c)(4) the beneficiary's right to seek an extension of status was entirely dependent upon the outcome of the petitioner's filing the petition to extend the beneficiary's employment in the United States. In light of the fact that the initial petition for this benefit was denied, the petitioner's only recourse was to either file an appeal pursuant to the regulations at 8 C.F.R. § 103.3 or to file a motion pursuant to the regulations at 8 C.F.R. § 103.5, assuming the petitioner's particular set of facts meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2) or a motion to reconsider at 8 C.F.R. § 103.5(a)(3). In the instant case, the petitioner did not appeal with the AAO or file a motion with the Texas Service Center. Therefore, the director properly denied the petitioner's second petition for an extension of the beneficiary's employment. Since the petitioner's eligibility had been previously considered under the relevant set of facts at the time that extension petition was filed, there was no need to revisit this issue in an improperly filed petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision dated February 15, 2002, denying the petition, will be upheld.